

Sales to governmental bodies are subject to tax unless the governmental body has obtained an active exemption identification number ("E" number) from the Department. See 86 Ill. Adm. Code 130.2080. (This is a GIL).

August 2, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 13, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This letter is a request for a ruling from the Department of Revenue regarding the obligation of COMPANY for collecting Illinois ROT in the following situation.

COMPANY is a manufacturer of office furniture located outside the State of Illinois who is registered for ROT. The office furniture is tangible personal property and is not bolted to the floor or attached to real property. We charge sales tax on all customer invoices unless we have received a valid Certificate of Resale or other valid exemption certificate from our customer. Tax is remitted to the State of Illinois monthly and timely, as required.

We have a customer, BUSINESS, located in Illinois. BUSINESS purchased office furniture as a subcontractor for the contractor of the US Government, AAA. Sales tax was charged on the order.

BUSINESS is claiming exemption from sales tax because the order is being used by the US government. I requested a CRT-61 Certificate of Resale from BUSINESS, but they say the exemption certificate from the GOVERNMENT is sufficient. No Certificate of Resale has been provided. I view the order as two transactions, the first between AAA and BUSINESS and the second transaction between BUSINESS and COMPANY. Without a valid resale certificate, the order is taxable.

Please determine if the GOVERNMENT exemption certificate is sufficient to exempt sales tax from this order.

Enclosed are a copy of the GOVERNMENT exemption certificate and a copy of the purchase order received from BUSINESS.

I would appreciate a timely reply so that we can abide by the laws of the State of Illinois in collecting and remitting the correct tax to the State. If you have questions, you may contact me.

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers (an "E" number). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007. Sales to governmental bodies are subject to tax unless the governmental body has obtained an active exemption identification number ("E" number) from the Department. See 86 Ill. Adm. Code 130.2080, enclosed. Companies selling tangible personal property to organizations that qualify as exclusively religious, charitable, or educational or to governmental bodies must be provided with an "E" number for sales to such organizations or governmental bodies to be tax exempt, unless another exemption can be documented.

It is important to note that only those sales of tangible personal property invoiced to the organization or governmental body itself are exempt. As a general proposition, individual members, clients or other associates of exempt organizations or governmental bodies who purchase items of tangible personal property with their own funds and are then reimbursed by the exempt organization, cannot purchase the items tax-free. As noted above, the sale must be made to the exempt organization or governmental body in order for the exemption to apply.

If you are making sales directly to the exempt governmental organization then you can accept their exemption number. However, your letter seems to indicate that you are selling to a contractor who is then selling to the exempt organization. In this case, the contractor must provide you a Certificate of Resale in order for the sale to be made tax-free.

A new regulation has been proposed by the Department that explains sales to the government. For your information, the proposed rule, 86 Ill. Adm. Code 130.2076 states as follows:

- a) Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. See, *U.S. v. New Mexico*, 455 U.S. 720, 102 S.Ct. 1373 (1982). However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. Sales of tangible personal property to the contractor in this situation are exempt from Retailers' Occupation Tax as sales for resale if the following conditions are met:
  - 1) There is a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body.
  - 2) The contract is specific in documenting a sale of tangible personal property from the purchaser to the governmental body. The contract must specify that the tangible personal property is transferred to the governmental body. However, the contract does not have to be item specific. For example, a statement that title to all of the tangible personal property that is purchased shall pass to the governmental body is

sufficient. The transfer may be immediate or subsequent to the completion of the contract.

- b) The exemption in subsection (a) above applies to tangible personal property that is used or consumed in the performance of a contract with a governmental body and to which title passes to the governmental body under the terms of the contract. For example, the exemption applies to consumable supplies, such as fuel, that a purchaser uses to fulfill the contract with the governmental body so long as the conditions set forth in subsection (a) are met.
- c) A supplier claiming exemption shall have among his records a Certificate of Resale from the purchasing government contractor that conforms to the requirements set forth in Section 130.1405.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.